

THOMAS C. STERLING
BLAIR STERLING JOHNSON
MARTINEZ & LEON GUERRERO
A PROFESSIONAL CORPORATION
SUITE 100B PACIFIC NEWS BUILDING
238 ARCHBISHOP F.C. FLORES STREET
HAGATNA, GUAM 96910-5205
TELEPHONE: (671) 477-7857

Attorneys for Plaintiff and Counter Defendant Nippo Corporation

FILED

DISTRICT COURT OF GUAM

OCT 10 2006

MARY L.M. MORAN
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

23 COMES NOW Counter Defendant **NIPPO CORPORATION** (hereinafter
24 "Nippo") and in answer to the counterclaims herein admits, denies
25 and alleges as follows:

26 1. Nippo admits the allegations contained in paragraphs 1,
27 2, 3, 4, 5, 7, 11, and 12.

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ORIGINAL
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1 2. In response to paragraph 6, Nippo admits only that in
2 late 2000, IBC and Nippo agreed to pursue Government construction
3 contracts as joint venture partners. Nippo denies generally and
4 specifically each and every other allegation contained in said
5 paragraph.

6 3. Nippo denies generally and specifically each and every
7 allegation contained in paragraphs 8 and 9 inasmuch as the
8 contracts speak for themselves as to their terms and conditions.

10 4. In response to paragraph 10, Nippo admits only that,
11 with the exception of at least 3 instances, when an IBC/Nippo
12 Joint Venture was awarded a contract, the Joint Venture would
13 enter into a subcontract with Nippo under which the work under
14 the project was subcontracted to Nippo and the Joint Venture
15 agreed to pay Nippo all money received by the Joint Venture from
16 the project owner. Nippo denies generally and specifically each
17 and every other allegation contained in said paragraph.

19 5. In response to paragraph 13, Nippo admits only that IBC
20 was originally the Managing Party to each of the Joint Venture
21 agreements and that that changed at a certain point in time.
22 Nippo denies generally and specifically each and every other
23 allegation contained in said paragraph.

25 6. In response to paragraph 14, Nippo admits only that on
26 or about January 19, 2006, the parties entered into a Joint
27 Venture Agreement Amendment which was to be effective as of
28 December 1, 2005. Nippo denies generally and specifically each

1 and every other allegation contained in said paragraph inasmuch
2 as the Joint Venture Agreement Amendment speaks for itself.

3 7. Nippo denies generally and specifically each and every
4 allegation contained in paragraph 15.

COUNT ONE

6 8. In response to paragraph 16, Nippo realiges and
7 incorporates herein by this reference its responses to paragraphs
8 1 through 15.

10 9. Nippo admits the allegations contained in paragraphs 17
11 and 20.

12 10. Nippo lacks sufficient information and belief to
13 formulate a response to paragraphs 18, 23, 24, and 26, and,
14 basing its denial thereon, denies generally and specifically each
15 and every allegation contained therein.

11. In response to paragraph 21, Nippo admits only that
17 some equipment was shipped to Makassar, Indonesia in or about
18 November 2005 and that some equipment was also shipped in late
19 January 2006 to load cement and that this equipment was shipped
20 on a vessel owned by InterBay Circle Marine. Nippo denies
21 generally and specifically each and every other allegation
22 contained in said paragraph.

12. In response to paragraph 22, Nippo admits only that
25 some of the equipment was listed in exhibits to the Equipment
26 Rental Agreement but Nippo denies generally and specifically each
27 and every other allegation contained in said paragraph.
28

1 13. In response to paragraph 25, Nippo admits only that
2 some of the cement was used on the AMEC project and that the
3 cement was loaded using the equipment which was shipped to
4 Makassar. Nippo denies generally and specifically each and every
5 other allegation contained in said paragraph.

7 14. Nippo denies generally and specifically each and every
8 allegation contained in paragraph 27 inasmuch as the Equipment
9 Rental Agreement speaks for itself as to its terms and
10 conditions.

11 15. Nippo denies generally and specifically each and every
12 allegation contained in paragraphs 19, 28, 29, 30, 31, and 32.

COUNT TWO

14 16. In response to paragraph 33, Nippo realleges and
15 incorporates herein by this reference its responses to paragraphs
16 1 through 15.

18 17. Nippo admits the allegations contained in paragraphs
19 40, 41, 45 and 46.

20 18. Nippo lacks sufficient information and belief to
21 formulate a response to paragraph 34 and, basing its denial
22 thereon, denies generally and specifically each and every
23 allegation contained therein.

24 19. Nippo denies generally and specifically each and every
25 allegation contained in paragraphs 35, 36, 37, 38, 39, and 42
26 inasmuch as the contracts at issue speak for themselves as to
27 their terms and conditions.
28

1 20. Nippo denies generally and specifically each and every
2 allegation contained in paragraphs 43, 44, 47, 48, 49, and 50.

COUNT THREE

4 21. In response to paragraph 51, Nippo realleges and
5 incorporates herein by this reference its responses to paragraphs
6 1 through 15, inclusive, and 34 through 50, inclusive.

8 22. Nippo admits the allegations contained in paragraph 53
9 and 55.

10 23. Nippo denies generally and specifically each and every
11 allegation contained in paragraphs 52, 54, and 56.

COUNT FOUR

13 24. In response to paragraph 57, Nippo realleges and
14 incorporates herein by this reference its responses to paragraphs
15 1 through 15, inclusive, and 34 through 50, inclusive.

25. Nippo admits the allegations contained in paragraph 59.

18 26. Nippo denies generally and specifically each and every
19 allegation contained in paragraph 58, 60, 61, 62, and 63.

COUNT FIVE

21 27. In response to paragraph 64, Nippo realleges and
22 incorporates herein by this reference its responses to paragraphs
23 1 through 15, inclusive.

24 28. Nippo admits the allegations contained in paragraphs
25 65, 66, 67, 68, 69, 70, 71, and 75.

26 29. Nippo denies generally and specifically each and every
27 allegation contained in paragraphs 72, 73, 74, 76, 77, 78, and
28

1 79.

2 **COUNT SIX**

3 30. In response to paragraph 80, Nippo realleges and
4 incorporates herein by this reference its responses to paragraphs
5 1 through 15, inclusive, and 65 through 79, inclusive.

6 31. Nippo admits the allegations contained in paragraph 82.

7 32. In response to paragraph 84, Nippo admits only that
8 IBCM has provided Nippo with invoices and that Nippo has refused
9 to pay such invoices but Nippo denies generally and specifically
10 each and every other allegation contained in said paragraph.

11 33. Nippo denies generally and specifically each and every
12 allegation contained in paragraphs 81, 83, and 85.

13 **COUNT SEVEN**

14 34. In response to paragraph 86, Nippo realleges and
15 incorporates herein by this reference its responses to paragraphs
16 1 through 15, inclusive, and 65 through 79, inclusive.

17 35. Nippo admits the allegations contained in paragraph 88.

18 36. Nippo denies generally and specifically each and every
19 allegation contained in paragraphs 87, 89, 90, and 91.

20 **COUNT EIGHT**

21 37. In response to paragraph 92, Nippo realleges and
22 incorporates herein by this reference its responses to paragraphs
23 1 through 15, inclusive.

24 38. Nippo admits the allegations contained in paragraphs
25 93, 94, 96, and 101.

111

2 39. In response to paragraph 95, Nippo admits only that the
3 Joint Venture entered into a subcontract for the work under the
4 PAIP XII Project but denies generally and specifically each and
5 every other allegation contained in said paragraph.

6 40. In response to paragraph 97, Nippo admits only that on
7 or about September 4, 2004, Nippo entered into a sub-subcontract
8 with IBC but Nippo denies generally and specifically each and
9 every other allegation contained in said paragraph inasmuch as
10 the sub-subcontract speaks for itself as to its terms and
11 conditions.

13 41. Nippo denies generally and specifically each and every
14 allegation contained in paragraphs 98, 99, 100, 102, 103, 104,
15 and 105.

COUNT NINE

18 42. In response to paragraph 106, Nippo realleges and
19 incorporates herein by this reference its responses to paragraphs
20 1 through 15, inclusive, and 93 through 105, inclusive.

21 43. Nippo admits the allegations contained in paragraph
22 107.

23 44. Nippo denies generally and specifically each and every
24 allegation contained in paragraphs 108 and 109.

COUNT TEN

27 45. In response to paragraph 110, Nippo realleges and
28 incorporates herein by this reference its responses to paragraphs

1 1 through 15, inclusive.

2 46. Nippo admits the allegations contained in paragraphs
3 111, 113, 115, 118, and 119.

4 47. In response to paragraph 112, Nippo admits only that
5 the JV Agreement for PAIP X included this provision but Nippo
6 denies generally and specifically each and every other allegation
7 contained in said paragraph.

8 48. In response to paragraph 114, Nippo admits only that
9 the IBC/Nippo Joint Venture entered into a subcontract with Nippo
10 for the work under the PAIP X project but denies generally and
11 specifically each and every other allegation contained therein.

12 49. In response to paragraph 116, Nippo admits only that on
13 or about June 19, 2002, Nippo entered into a subcontract with IBC
14 under the terms of which IBC agreed to perform the work required
15 on the PAIP X Project. Nippo denies generally and specifically
16 each and every other allegation in said paragraph.

17 50. Nippo denies generally and specifically each and every
18 allegation contained in paragraphs 117, and 120.

21 **COUNT ELEVEN**

22 51. In response to paragraph 121, Nippo realleges and
23 incorporates herein by this reference its responses to paragraphs
24 1 through 15, inclusive.

25 52. Nippo admits the allegations contained in paragraphs
26 122, 124, 126, and 132.

28 53. In response to paragraph 123, Nippo admits only that

1 the JV Agreement included this provision but denies generally and
2 specifically each and every other allegation contained therein.

3 54. In response to paragraph 125, Nippo admits that the
4 IBC/Nippo Joint Venture entered into a subcontract with Nippo for
5 the work under the Route 4 Project but denies generally and
6 specifically each and every other allegation contained therein.
7

8 55. In response to paragraph 127, Nippo admits only that on
9 or about October 7, 2002, it entered into a sub-subcontract with
10 IBC under the terms of which IBC agreed to perform work on the
11 Route 4 Project, but Nippo denies generally and specifically each
12 and every other allegation contained in said paragraph.

13 56. Nippo denies generally and specifically each and every
14 allegation contained in paragraphs 128, 129, 130, 131, 133, 134,
15 and 135.
16

COUNT TWELVE

17 57. In response to paragraph 136, Nippo realleges and
18 incorporates herein by this reference its responses to paragraphs
19 1 through 15, inclusive.

21 58. Nippo admits the allegations contained in paragraphs
22 137, 139, 141, 144, 146, and 149.

23 59. In response to paragraph 138, Nippo admits that the JV
24 Agreement contained this provision but denies generally and
25 specifically each and every other allegation contained therein.
26

27 60. In response to paragraph 140, Nippo admits only that
28 the Joint Venture entered into a subcontract with Nippo for the

1 work under the Wake Island Project but denies generally and
2 specifically each and every other allegation contained there.

3 61. In response to paragraph 142, Nippo admits only that on
4 or about May 27, 2003, Nippo entered into a sub-subcontract with
5 IBC under the terms of which IBC agreed to perform the work
6 required under the Wake Island Project but Nippo denies generally
7 and specifically each and every other allegation contained in
8 said paragraph.

10 62. In response to paragraph 148, Nippo admits only that it
11 has certified a claim as being true and correct and has submitted
12 that claim to the Navy in the amount of \$6,750,070 on behalf of
13 the Joint Venture. Nippo further admits only that IBC
14 participated in the preparation of the claim but Nippo denies
15 generally and specifically each and every other allegation
16 contained in said paragraph.

18 63. Nippo denies generally and specifically each and every
19 allegation contained in paragraphs 143, 145, and 147.

20 **COUNT THIRTEEN**

21 64. In response to paragraph 150, Nippo realleges and
22 incorporates herein by this reference its responses to paragraphs
23 1 through 15, inclusive, and 137 through 149, inclusive.

24 65. Nippo denies generally and specifically each and every
25 allegation contained in paragraphs 151, 152, 153, and 154.

27 **COUNT FOURTEEN**

28 66. In response to paragraph 155, Nippo realleges and

1 incorporates herein by this reference its responses to paragraphs
2 1 through 15, inclusive.

3 67. Nippo admits the allegations contained in paragraphs
4 156 and 157.

5 68. In response to paragraph 159, Nippo admits the first
6 sentence of said paragraph and further admits that on or about
7 January 26, 2006, Nippo and IBC entered into a Joint Venture
8 Agreement Amendment to be effective December 1, 2005 but Nippo
9 denies generally and specifically each and every other allegation
10 contained in said paragraph since the Joint Venture Agreement
11 Amendment speaks for itself as to its terms and conditions.

12 69. In response to paragraph 162, Nippo admits only that
13 work on the AMEC Project is not yet complete and that IBC has
14 complained to the Nippo Board of Directors about alleged
15 mismanagement. Nippo denies generally and specifically each and
16 every other allegation contained in said paragraph.

17 70. Nippo denies generally and specifically each and every
18 allegation contained in paragraphs 158, 160, 161, 163, 164, and
19 165.

20 **COUNT FIFTEEN**

21 71. In response to paragraph 166, Nippo realleges and
22 incorporates herein by this reference its responses to paragraphs
23 1 through 15, inclusive.

24 72. Nippo admits the allegations contained in paragraphs
25 167, 169, 171, and 172.

1 73. In response to paragraph 176, Nippo admits only that
2 IBC is entitled to an accounting on this project but Nippo denies
3 generally and specifically each and every other allegation
4 contained in said paragraph.

6 74. Nippo denies generally and specifically each and every
allegation contained in paragraphs 168, 170, 173, 174, and 175.

COUNT SIXTEEN

9 75. In response to paragraph 177, Nippo realleges and
10 incorporates herein by this reference its responses to paragraphs
11 1 through 15, inclusive.

12 76. Nippo admits the allegations contained in paragraphs
13 178, 180, 182, and 183.

14 77. In response to paragraph 186, Nippo admits only the
15 allegations contained in the first sentence of said paragraph.
16
17 Nippo denies generally and specifically each and every other
18 allegation contained in said paragraph.

19 78. Nippo denies generally and specifically each and every
20 allegation contained in paragraphs 179, 181, 184, 185, and 187.

COUNT SEVENTEEN

22 79. In response to paragraph 188, Nippo realleges and
23 incorporates herein by this reference its responses to paragraphs
24 to paragraphs 1 through 15, inclusive.

25 80. Nippo admits the allegations contained in paragraphs
26 193 and 196.

28 81. In response to paragraph 192, Nippo admits only that

1 the IBC/Nippo Joint Venture entered into a subcontract with Nippo
2 for the work under the Koyukuk Project but Nippo denies generally
3 and specifically each and every other allegation contained in
4 said paragraph.

82. In response to paragraph 194, Nippo admits only that on
or about November 11, 2003, Nippo entered into a sub-subcontract
with IBC under the terms of which IBC agreed to perform the work
required on the Koyukuk Project. Nippo denies generally and
specifically each and every other allegation contained in said
paragraph.

12 83. In response to paragraph 201, Nippo admits only that
13 IBC is entitled to an accounting on this project but Nippo denies
14 generally and specifically each and every other allegation
15 contained in said paragraph.

17 84. Nippo lacks sufficient information and belief to
18 formulate a response to the allegations contained in paragraph
19 197 and, basing its denial thereon, denies generally and
20 specifically each and every allegation contained therein.

21 85. Nippo denies generally and specifically each and every
22 allegation contained in paragraphs 189, 190, 191, 195, 198, 199,
23 and 200.

COUNT EIGHTEEN

26 86. In response to paragraph 202, Nippo realleges and
27 incorporates herein by this reference its responses to paragraphs
28 1 through 201.

1 87. Nippo admits the allegations contained in paragraph
2 203.

3 88. Nippo denies generally and specifically each and every
4 allegation contained in paragraph 204.

5 89. In response to paragraph 205, Nippo admits that IBC is
6 entitled to a full and complete accounting of the Joint Venture
7 affairs but Nippo denies generally and specifically each and
8 every other allegation contained in said paragraph.

COUNT NINETEEN

11 90. In response to paragraph 206, Nippo realleges and
12 incorporates herein by this reference its responses to paragraphs
13 1 through 15.

14 91. Nippo admits the allegations contained in paragraphs
15 207.

17 92. In response to paragraph 208, Nippo admits only that
18 IBC was entitled to a credit in the amount of \$2,641,130 but
19 denies generally and specifically that such credit applies to the
20 claims being advanced by Nippo herein inasmuch as that amount has
21 already been credited in arriving at the amounts sought by Nippo
22 in its First Amended Complaint.

COUNT TWENTY

24 93. In response to paragraph 209, Nippo realleges and
25 incorporates herein by this reference its responses to paragraphs
26 1 through 15.

28 94. Nippo admits the allegations contained in paragraphs

1 210 and 211.

2 95. Nippo denies generally and specifically each and every
3 allegation contained in paragraphs 212, 213, and 214.

4 **COUNT TWENTY-ONE**

5 96. In response to paragraph 215, Nippo realleges and
6 incorporates herein by this reference its responses to paragraphs
7 1 through 15.

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10 97. In response to paragraph 216, Nippo admits only that
11 the Joint Venture Agreement Amendment obligated Nippo to pay some
12 Alaska office expenses but Nippo denies generally and
13 specifically each and every other allegation contained in said
14 paragraph inasmuch as the Joint Venture Agreement Amendment
15 speaks for itself as to its terms and conditions.

16 98. Nippo denies generally and specifically each and every
17 allegation contained in paragraphs 217 and 218 and further
18 affirmatively alleges that IBC has already obtained the benefit
19 of a \$170,000 credit in connection with Alaska office expenses.

21 **COUNT TWENTY-TWO**

22 99. In response to paragraph 219, Nippo realleges and
23 incorporates herein by this reference its responses to paragraphs
24 1 through 205.

25 100. Nippo denies generally and specifically each and every
26 allegation contained in paragraphs 220 and 221 inasmuch as those
27 paragraphs refer to numerous agreements and those agreements

1 speak for themselves as to the terms and conditions applicable to
2 an award of attorneys' fees.

3 **FIRST AFFIRMATIVE DEFENSE**

4 The counterclaims fail to state a claim or claims upon which
5 relief may be granted.

6 **SECOND AFFIRMATIVE DEFENSE**

7 The counterclaimants have waived the claims asserted in the
8 counterclaims.

9 **THIRD AFFIRMATIVE DEFENSE**

10 Nippo is owed large sums of money from the counterclaimants,
11 including the debts alleged in Nippo's claims herein and others,
12 and those amounts serve as an offset against the damages, if any,
13 otherwise awardable to the counterclaimants.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 The counterclaimants are barred due to various accords and
16 satisfactions which have been reached between the
17 counterclaimants and Nippo.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 To the extent that any of the counterclaims are
20 characterized as tort claims, any injuries or damages which the
21 counterclaimants sustained were caused primarily by their own
22 negligence and its claims are therefore barred.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 To the extent that any of the counterclaimants' claims are
25 characterized as tort claims, any injuries or damages
26 counterclaimants sustained were partially caused by their own

1 negligence, and their damages, if any, must be reduced by the
2 percentage of causal negligence attributable to them.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 Counterclaimants are equitably estopped from pursuing any of
5 the claims set forth in the counterclaims.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 Nippo affirmatively alleges that IBC has failed to perform
8 the obligations applicable to IBC under the agreements between
9 Nippo and IBC and that Nippo's performance has therefore been
10 executed.

11 **NINTH AFFIRMATIVE DEFENSE**

12 The counterclaimants have unclean hands in connection with
13 the transactions alleged and are, therefore, not entitled to any
14 of the equitable relief requested in the counterclaims.

15 **WHEREFORE**, Counter Defendant **NIPPO CORPORATION** prays judgment
16 as follows:

17 1. That Counterclaimants take nothing by their
18 counterclaims.

19 2. For costs of suit incurred herein;

20 3. For reasonable attorneys' fees to the extent authorized
21 by the contracts at issue; and

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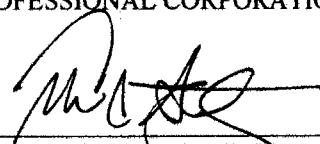
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1 4. For such other and further relief as the Court may deem
2 just and proper.
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10 **BLAIR STERLING JOHNSON**
11 **MARTINEZ & LEON GUERRERO**
12 A PROFESSIONAL CORPORATION

13 BY: 

14 **THOMAS C. STERLING**

15 *Attorneys for Plaintiff and Counter Defendant Nippo
16 Corporation*

17 DATED: OCTOBER 10, 2006

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